HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

W.P.NO.19824 OF 2005

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Between:

Smt.K.Lavanya

..... Appellant

AND

The Registrar(Administration),

High Court of Andhra Pradesh,

Hyderabad and 3 others.

.....Respondents

::JUDGMENT::

Counsel for the Petitioner : Sri K.Pandu Ranga Rao

Counsel for Respondent Nos. 1 and 2 : Sri C.V.Nagarjuna Reddy

Counsel for Respondent Nos.3 and 4 : Sri V.Venugopala Rao

Dated 6/3 /2006

Per Shri G.S.Singhvi, CJ

In this petition, the petitioner has prayed for quashing memo dated 21.6.2005 issued by respondent No.2 conveying the rejection of her claim for death pension–cum-retirement benefits. She has further prayed for issue of a writ in the nature of mandamus directing respondents 1 and 2 to release the death pension-cum-retirement benefits in lieu of the services rendered by late Sri K.Bhaskara Rao, who died on 1.4.2004 while serving as Assistant Section Officer in the employment of High Court Of Andhra Pradesh.

In the affidavit filed in support of the writ petition, the petitioner has averred that she had solemnized marriage with Sri K.Bhaskara Rao on 9.2.1992 and she is entitled to death-cum-retirement gratuity and other benefits payable by the employer in lieu

of the services rendered by her late husband. She has relied on the proceedings filed in the Court of Judicial Magistrate of First class, Yemmiganur, Kurnool District under Section 125 of the Code of Criminal Procedure and pleaded that even though the order passed by the learned Judicial Magistrate of First Class was reversed by the

III Additional Sessions Judge, Kurnool in Crl.R.P.No.24 of 1996 on the premise that the first marriage was subsisting on the date of the second marriage, respondent Nos. 1 and 2 are duty bound to entertain her claim for death pension-cum-retirement benefits, gratuity, pension etc.,

In the counter affidavit filed by respondent No.1, it has been averred that the petitioner's marriage with Sri K.Bhaskara Rao cannot be recognized for the purpose of grant of monetory benefits in lieu of the services rendered by him because his first marriage with Smt.B.V.Naga Laxmi was subsisting on 9.2.1992. In para 9 of the counter affidavit, the Registrar (Administration) has averred that various monetory benefits except family pension and gratuity payable to the family of the deceased have been paid to the daughter and son of late Sri K.Bhaskara Rao. For the sake of convenience, para 9 of the affidavit of Sri Yerrapragada Venkata Rama Krishna, Registrar General & Full Additional Charge of the post of Registrar (Administration) of the High Court is reproduced below.

> "It is submitted that the High Court already released the Group Insurance amount of Rs.60,000/- and Rs.10,857/- vide bills bearing No.1019 and 1014 dated 8.6.2005 in favour of Kum.Sireesha, daughter of late Sri K.Bhaskara Rao. It is further submitted that the Family Benefit Fund amount of Rs.4,431/- and Rs.622/- were released – vide bills bearing No.1017 and 1018 dated 8.6.2005 in favour of Kum.K.Sireesha daughter of late Sri K.Bhaskar Rao. It is further submitted that the encashment of Earned leave amount of Rs.57,755/- was released – vide Bill No.1016 dated 8.6.2005 in favour of Kum.K.Sireesha, daughter of late Sri K.Bhaskar Rao. The amount of Rs.6,35,895/- towards General Provident Fund of late Sri K.Bhaskar Rao was released equally i.e. Rs.3,17,948/- each in favour of his legal heirs viz., K.Sireesha (Daughter) and K.Mahesh (son). All the payments were made as per orders of the Registrar (Administration). The remaining pensionary benefits of the deceased employee such as pension and gratuity were withheld in view of the pendency of the present writ petition filed by the petitioner, claiming the retirement benefits as the second wife of the deceased

employee."

Learned counsel for the petitioner strongly relied on the judgment of the Supreme Court in **Rameshchandra Rampratapji Daga vs. Rameshwari Rameshchandra Daga** and argued that recognition by the Supreme Court of the second wife's right to receive maintenance should be logically extended to the claim of the petitioner herein to be paid monetory benefits in lieu of the services rendered by her husband. He submitted that despite the findings recorded by III Additional Sessions Judge, Kurnool in Crl.R.P.No.24 of 1996, his client should not be denied pension and gratuity etc., payable to the family of the deceased employee.

Sri C.V.Nagarjuna Reddy, learned counsel for respondent Nos.1 and 2 argued that in the face of findings recorded by III Additional District Judge, Kurnool that the petitioner's marriage with Sri K.Bhaskar Rao was nullity, she cannot claim pension and gratuity in lieu of the services rendered by late Sri Bhaskar Rao.

We have considered the respective submissions and have also gone through the relevant provisions of the Andhra Pradesh Revised Pension Rules, 1980 (for short 'the 1980 Rules). In our opinion, the writ petition is liable to be dismissed for the simple reason that the petitioner has not chosen to implead the Andhra Pradesh High Court as party respondent. Admittedly, late Sri K.Bhaskar Rao was an employee of the High Court. Therefore, the mere fact that Registrar (Administration) is designated as the appointing authority is not sufficient to entitle the petitioner to make a claim for payment of pension etc., against respondent Nos.1 and 2 i.e., Registrar (Administration) and Deputy Registrar of the High Court. The financial burden of making payment of pension, gratuity etc., to the family of the deceased employee is of the State and its instrumentalities and not of any individual employer or officer. The High Court of Andhra Pradesh is a constitutional organ of the State. Therefore, any direction for payment of pension, gratuity etc., to its employees or their families is of the High Court and as the petitioner has not impleaded the employer as party respondent, it is not possible to entertain her claim for death pension-cum-retirement benefits, in terms of Rule 50 of the 1980 Rules. In this connection, we may usefully refer to the judgment of the Supreme Court in **Ranjit Mal v. General Manager, Northern Railways, New Delhi and another**. In that, an employee had challenged his dismissal from service and impleaded the General

Manager, Northen Railways as party respondent. The impleaded respondent raised an objection to the very maintainability of the writ petition on the ground that Union of India had not been impleaded as party respondent. The Single Bench and Division Benches of the High Court upheld the objection and dismissed the writ petition. While approving the view taken by the High Court, the Supreme Court held as under;

> "It cannot be disputed that the appellant was a servant of the Union. It is equally indisputable that any order of removal is removal from service of the Union. The appellant challenged that order. Any order which can be passed by any Court would have to be enforced against the union. The General Manager or any other Authority acting in the Railway Administration is as much a servant of the Union as the appellant was in the present case.
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> The Union of India represents the Railway Administration. The Union carries administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High Court to be a necessary party. The petition was rightly rejected by the High Court."

In our opinion, the ratio of the aforementioned decision is squarely applicable to the case on hand because the petitioner has claimed the grant of monetory benefits in lieu of the services rendered by late Sri K.Bhaskar Rao.

We are further of the view that in exercise of power under Article 226 of the Constitution of India, this Court cannot decide the contentious issues involving adjudication of the petitioner's claim to be treated as legally wedded wife of late Sri K.Bhaskar Rao. The remedy, if any, available to the petitioner for adjudication of such dispute is by way of civil suit.

For the reasons mentioned above, the writ petition is dismissed. However, it is made clear that the petitioner shall be free to avail remedy by filing civil suit.

G.S.SINGHVI, CJ

Dt.6/3/2006

G.BHAVANI PRASAD,J

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